

SUMMONS ISSUED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SHARILYN FRANCO,

Plaintiff,

-against-

ARS NATIONAL SERVICES, INC. d/b/a
ASSOCIATED RECOVERY SYSTEMS

Defendant.

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.

★ AUG 09 2011 ★

Civil Action No.:
BROOKLYN OFFICE

COMPLAINT
CV 11 - 3829

DEMAND FOR JURY TRIAL

IRIZARRY, J.

AZRACK, M.J.

Plaintiff SHARILYN FRANCO ("Plaintiff"), by and through her attorneys, LAW OFFICES OF ALLISON POLESKY, P.C., as and for her Complaint against the Defendant ARS NATIONAL SERVICES, INC. d/b/a ASSOCIATED RECOVERY SYSTEMS ("Defendant" or "ARS"), respectfully sets forth, complains and alleges, upon information and belief, the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this action on her own behalf for damages and declaratory and injunctive relief arising from the Defendant's violation(s) of §1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act ("FDCPA") and New York General Business Law §349.

PARTIES

2. Plaintiff is a resident of the State of New York, residing at 410 Quentin Rd., Brooklyn, NY 11223.

3. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. 1692a(3).

4. Defendant ARS is a national corporation engaged in business of collecting debts with its corporate headquarters located at 201 West Grand Avenue, Escondido, California, 92025.

5. ARS is a "debt collector" as the phrase is defined and used in the FDCPA under 15 U.S.C. §1692a(6).

JURISDICTION AND VENUE

6. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331, as well as 15 U.S.C. §1692 et seq. and 28 U.S.C. §2201.

7. The Court has supplemental jurisdiction over the state law claims in this action pursuant to 28 U.S.C. §1367(a).

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

9. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "8" herein with the same force and effect as if the same were set forth at length herein.

10. On information and belief, on a date better known to the Defendant, an unknown third party original creditor or creditors, either directly or through intermediate transactions assigned, placed, transferred, or sold the debt to ARS for collection ("the alleged debt").

11. The alleged debt is a "debt" as defined by 15 U.S.C. §1692a(5).

12. On or about May 31, 2011, Defendant placed a telephone call to Plaintiff in an attempt to collect the alleged debt and at that time left a voice mail message.

13. Defendant's voice mail message is the following: "Hi this message is for Sharilyn Franco. This is Jackie Bailey. It's important that you return my call Sharilyn. The number here is 888-319-0986 extension 1484 and reference 22867002."

14. Defendant failed to give Plaintiff the required disclosures by identifying themselves as a debt collector, that they were attempting to collect a debt, and that any information would be used for that purpose thereby violating 15 U.S.C. §1692e(11).

15. Defendant further violated 15 U.S.C. §1692e – preface and (10) by using a deceptive and misleading means and representation by not providing the required warnings under 15 U.S.C. §1692e(11).

16. Defendant violated 15 U.S.C. §1692d-preface and (6) by failing to provide meaningful disclosure of the caller's identity to Plaintiff when the Defendant communicated with Plaintiff without identifying the purpose of the call and disclosing to Plaintiff the Defendant's identity as a debt collector calling in reference to a debt collection and that any information obtained will be used for that purpose.

17. Plaintiff suffered and continues to suffer from great personal humiliation, embarrassment, mental anguish, stress, and emotional distress as a result of Defendant's harassment and actions.

18. Defendant violated the FDCPA.

19. Defendant violated the NYS General Business Law §349.

20. Therefore due to the Defendant's gross violations of the FDCPA the Plaintiff has been damaged.

FIRST CAUSE OF ACTION
FAIR DEBT COLLECTION PRACTICES ACT

21. Plaintiff repeats, reiterates and incorporates the allegations contained in

paragraphs numbered "1" through "20" herein with the same force and effect as if the same were set forth at length herein.

22. Defendant's debt collection attempts attempted and/or directed towards the Plaintiff violate various provisions of the FDCPA, including but not limited to the following:

- a. 15 U.S.C. §1692d-preface, (5) and (6).
- b. 15 U.S.C. §1692e-preface, (10) and (11).
- c. 15 U.S.C. §1692f-preface and (5).

23. As a result of defendant's violations of the FDCPA, Plaintiff and class members have been damaged and are entitled to damages in accordance with the FDCPA.

SECOND CAUSE OF ACTION
NEW YORK STATE GENERAL BUSINESS LAW §349

24. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "23" herein with the same force and effect as if the same were set forth at length herein.

25. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated the FDCPA. Defendant's violations include, but are not limited to, the following:

- a. The Defendant violated NYS Gen. Bus. Law §349(a).

26. As a result of Defendant's above violations of the New York General Business Law, the Plaintiff has been damaged and is entitled to damages in accordance with the New York General Business Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff SHARILYN FRANCO demands judgment from the Defendant ARS NATIONAL SERVICES, INC. d/b/a ASSOCIATED RECOVERY SYSTEMS as follows:

- A. For actual damages provided and pursuant to 15 U.S.C. §1692k(a)(1); and

General Business Law

B. For statutory damages provided and pursuant to 15 U.S.C. §1692k(2)(A);
and General Business Law

C. For statutory damages provided and pursuant to 15 U.S.C. §1692k(2)(B);

D. For attorneys' fees and costs provided and pursuant to 15 U.S.C.
§1692k(a)(3); and General Business Law

E. A declaration that the Defendant's practices violated the FDCPA and
General Business Law


F. For any such other and further relief, as well as further costs, expenses and
disbursements of this action, as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff SHARILYN FRANCO hereby respectfully requests a trial by jury for all claims
and issues in her Complaint to which she is or may be entitled to a jury trial.

Dated: August 5, 2011

Respectfully submitted,

By: 
Allison Polesky, Esq. (AP5446)
LAW OFFICES OF ALLISON POLESKY, P.C.
511 Avenue of the Americas, Suite 712
New York, New York 10011
Phone: (866) 479-9500
Facsimile: (866) 688-4300
Attorney for Plaintiff SHARILYN FRANCO